97-84018-18

New York Chamber of Commerce of the State...

Rules for the prevention of unnecessary litigation

[New York]

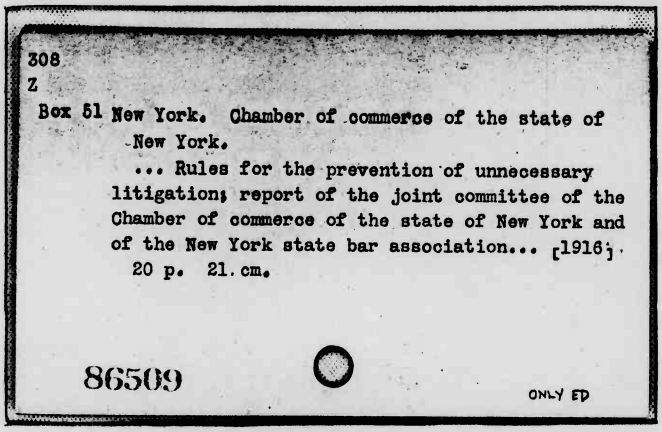
[1916]

97-84018-18
MASTER NEGATIVE #

COLUMBIA UNIVERSITY LIBRARIES
PRESERVATION DIVISION

BIBLIOGRAPHIC MICROFORM TARGET

ORIGINAL MATERIAL AS FILMED - EXISTING BIBLIOGRAPHIC RECORD


308
Z
Box 51 New York. Chamber of commerce of the state of New York.
... Rules for the prevention of unnecessary litigation; report of the joint committee of the Chamber of commerce of the state of New York and of the New York state bar association... [1916]
20 p. 21. cm.
86509
ONLY ED

RESTRICTIONS ON USE: *Reproductions may not be made without permission from Columbia University Libraries.*

TECHNICAL MICROFORM DATA

FILM SIZE: 35 mm REDUCTION RATIO: 10:1 IMAGE PLACEMENT: IA (IIA) IB IIB

DATE FILMED: 2-7-97 INITIALS: PB

TRACKING # : 21166

FILMED BY PRESERVATION RESOURCES, BETHLEHEM, PA.

OCT 3 0 1916

To the Members of the Chamber of Commerce:

The following Report will be acted upon at the meeting of the Chamber on November 2, 1916.

Please consider this report confidential until acted upon by the Chamber.

CHARLES T. GWYNNE, Secretary.

308
2
Bo451

RULES

FOR THE

PREVENTION

OF

UNNECESSARY LITIGATION

REPORT
OF
THE JOINT COMMITTEE
OF
THE CHAMBER OF COMMERCE
OF THE
STATE OF NEW YORK
AND OF
THE NEW YORK STATE BAR ASSOCIATION

CHARLES T. GWYNNE, SECRETARY
65 LIBERTY STREET, NEW YORK

CONTENTS

	PAGE
OBJECT OF THE RULES	5
UNNECESSARY LITIGATION DEFINED	5
PART I.—PREVENTION OF LITIGATION AT THE SOURCE	6
Advice of Counsel	7
Contracts	8
Wills	11
Trusts	14
Executors, Administrators and Trustees	14
Guardians	15
Corporations	15
Real Estate	15
PART II.—PREVENTION OF LITIGATION AFTER THE FACTS BECOME FIXED AND BEFORE SUIT	16
Minimizing Differences	17
Adjustment of Differences	17
Submission of Controversy on Agreed Statement of Facts	18
Arbitration	18
Parties Who May Arbitrate	18
Disputes That May Be Arbitrated	18
Informal Arbitration	19
Arbitration Under the Code	19
Arbitration Under the Auspices of Commercial Bodies	19
Arbitration Under the Auspices of the New York State Bar Association	19
PART III.—PREVENTION OF LITIGATION AFTER SUIT	20

RULES FOR THE PREVENTION OF UNNECESSARY LITIGATION

Object of the Rules.

It would be impracticable for the Chamber of Commerce of the State of New York and the New York State Bar Association to attempt to lay down rules of law for the guidance of laymen. That would be an attempt to write law books and to make every man his own lawyer. Such a course would be futile. It would promote, rather than prevent, unnecessary legislation.

The attempt here made is simply to put in concrete form a few common sense rules of business which experience has proved to be valuable in the prevention of unnecessary litigation. As litigation and its prevention are peculiarly within the province of the legal profession, these rules necessarily relate, in large measure, to the advice of counsel and to the point at which it is to the interest of the business man to turn to his lawyer for guidance.

These rules are constructed on the theory that prevention is preferable to cure. They contain nothing that is new and much that is necessarily general and commonplace. If they did not represent a common experience, they would be useless. Therefore, in the preparation of these rules, an effort has been made to present recognized business principles in the simplest possible form and even to formulate what may sometimes seem to be self-evident truths. Even if the truths are trite, the fact that they are formulated may serve as a reminder at a critical moment.

Unnecessary Litigation Defined.

Litigation may be said to be unnecessary if it can be prevented by the exercise of reasonable care. There are three points at which reasonable care is specially effective. Care at the source is, of course, most effective. After the facts become fixed and before suit, it may or may not prevent litigation. After suit, it may reduce the litigation. These rules are accordingly divided into three parts:

I. Prevention of Litigation at the Source.

II. Prevention of Litigation after the Facts become fixed and before Suit.

III. Prevention of Litigation after Suit.

PART I.

PREVENTION OF LITIGATION AT THE SOURCE.

Experience has shown that the point at which unnecessary litigation can be the most easily invited and the most effectually prevented, is at the source; that is, before the facts upon which a dispute can arise become fixed. At that time, the facts are in a formative state and respond to the moulding hand. If one proposed state of facts or set of words is liable to lead to a dispute, another state of facts or set of words can be substituted.

The basis of all litigation is a dispute concerning the facts or the law, or both. Theoretically, the law is a known quantity. Indeed, it is a well settled legal principle that every man is presumed to know the law. It is an equally well settled principle that ignorance of the law is no excuse for the violation of the law. Otherwise law could never be enforced.

Disputes concerning the law as an abstract proposition are of comparatively rare occurrence. The usual dispute concerns the application of the law either to an admitted state of facts or to a disputed state of facts. The latter case is by far the more common. Thus it is that success or failure in litigation usually turns upon the facts.

While the law cannot be changed by individuals the facts are peculiarly within their power. Of course one cannot change the order of nature, but, within proper limitations, a person has great latitude in determining facts in advance of any dispute. He can so determine the facts that the opportunity for dispute is large or small depending upon the wisdom with which he has acted. For example, the presence or absence of particular words or phrases in a contract or will is a fact within the power of the makers of such instruments. If proper words are chosen to fit perfectly all possible contingencies that may arise, there can be no dispute. If the words used do not fit perfectly all possible contingencies that arise, their meaning and legal effect may become disputed questions that require litigation for settlement.

Litigation, in a majority of civil cases, is the offspring of disputes concerning property. If there can be no dispute there can be no litigation.

The world's great instrumentalities for preventing disputes concerning property are two in number. The office of each is much the same and relates to the ownership of property. The first is the creator of

wealth and the instrument of trade. It is a mutual agreement between two or more persons and is known as a *contract*. The second relates to the transmission of property after death. It is made by one person, usually in secret, to take effect after death and is known as a *will*.

Advice of Counsel.

Experience has shown that the key to the prevention of much unnecessary litigation lies in the confidence and cooperation between the laity and the legal profession. That confidence and cooperation necessarily depends upon an intelligent understanding of certain truths peculiarly within the knowledge of the profession. The better those truths are understood the more clearly will the lawyer stand before the public as a constructive force. His true character as an aid to prosperity will be appreciated quite as much as are his remedial powers in case of adversity.

The legal profession is the guardian of peaceful trade during life and of the orderly transmission of property after death. Like the medical profession, it is distinguished from a business in that its first consideration is the discharge of a trust or duty to another. The advice given or service rendered must not be and, among worthy members of the profession, it is not tainted by a selfish motive.

For the good name of the profession and for the protection of the client, it is the duty of the lawyer to bring to his task good faith and nothing less than ordinary professional skill, care and diligence. A lawyer is not ordinarily required to bring to his task extraordinary professional attainments, and the client has no right to expect such attainments simply from the fact that his legal adviser holds a license for the practice of law. If he wishes exceptional professional attainments in any line he must seek for them, just as in the medical profession, and must not complain because all lawyers are not equally learned, careful and diligent.

RULE 1. Consult counsel in advance of important undertakings and also when uncertain of any contemplated action.

RULE 2. Remember that the point at which unnecessary litigation can be most easily invited and also the most easily prevented, is at the source.

RULE 3. Experience has shown that the layman that draws his own

legal documents or seeks to have them drawn by a person possessing anything less than ordinary professional skill is inviting unnecessary disputes and litigation.

RULE 4. Remember that the wise choice of a legal adviser is half the battle.

RULE 5. Learn to appreciate the importance of and to demand carefully prepared contracts, wills, and other legal writings.

RULE 6. Learn to regard the lawyer as a constructive force quite as much as the possessor of remedial powers.

RULE 7. Learn to consult counsel freely before the facts upon which a dispute can arise become fixed. If the facts have become fixed, learn to consult counsel before or at the inception of the dispute.

RULE 8. As you consult your banker on financial matters, your credit agency on credit matters, your newspaper on market conditions, so in advance consult your legal adviser on the serious problems of your business.

RULE 9. Remember that if consulted in time, a lawyer can prevent disputes that, later, he could not cure.

RULE 10. Remember that the professional man of the highest standing in law, as in medicine, can often best serve the interests in his keeping by calling in a specialist or one having unusual skill and experience in a particular branch of legal work.

RULE 11. If counsel fails to prevent litigation, remember that it may not be his fault. It may be the fault of his client, the fault of others or the fault of the limitations of human nature.

Contracts.

The contract is the world's greatest instrumentality for the prevention of disputes. It is the basis of trade throughout the world. Its office is to bring together the minds of opposing parties. If the contract is perfect, it will so provide for all possible contingencies that during its continuance there shall be no room for dispute as to its meaning. The only dispute that can then arise is as to its performance —whether the act done or thing delivered measures up to the terms of the contract. (See Part II, p 16.)

As the contract falls short of perfection, the opportunities for dispute multiply both as to the meaning of the contract and as to its performance. Happily, most business transactions are simple. Most business engagements are performed at the time they are made. In such cases, there is usually little room for dispute. Where, however, performance is postponed or requires a continuing and unusual course of action, there is greater opportunity for dispute and, consequently, a greater necessity for a careful preparation of the contract.

In making such contracts, experience has shown that it is wise for each party interested to look into the future and to see to it that from his point of view such words are used as will safeguard his interest against all possible contingencies and truly reflect the meeting of the minds of both parties. This necessity of business has led to the employment of counsel in the preparation of important contracts and, finally, to the standardization of many kinds of contracts, such as deeds, mortgages, insurance policies, promissory notes, bills of lading and the like.

These standard contracts are necessary to the transaction of ordinary business and represent the wisdom and experience of ages. Many contracts, however, are not capable of standardization, and these are the contracts that cause the most disputes and litigation.

On the basis of space devoted to each subject, in a standard digest of all reported cases, it seems that of all the litigation in the State of New York concerning non-standardized contracts, about 28 per cent. concerns the meaning of the instrument. In contrast with this the percentage of litigation concerning the meaning of standardized contracts, it may be well to note, ranges only from three to seven per cent.

These figures are to be taken as nothing more than approximate; but they are, nevertheless, useful as showing the value of the standardization, or careful preparation, of contracts. They clearly show that uncertainty of meaning is the great breeder of disputes and litigation.

RULE 1. Reduce agreements to writing whenever practicable.

RULE 2. Have clearly in mind the object to be attained and the method of attaining that object.

RULE 3. Seek out all possible contingencies that may arise and consider carefully what may be the consequences of each.

RULE 4. Devise ways and means of meeting those contingencies and their consequences.

RULE 5. Do not enter into important contracts without legal advice.

RULE 6. When counsel is to prepare a legal document tell him everything, or, better still, write the facts without reserve. Withhold no information regarding yourself or the other parties, lest a fact apparently immaterial may prove to be of importance.

RULE 7. Take special care that the language used shall, under all possible circumstances, convey the desired meaning beyond the possibility of a doubt.

RULE 8. If there is the slightest doubt as to the language, do not remain silent but urge your views upon counsel.

RULE 9. Remember that the preparation of such a document may cost in time, thought and money, a little more than slipshod work, but it will be well worth what it costs.

RULE 10. If a legal instrument is submitted for execution, place it in the hands of counsel with instructions to test it in your interest on the lines above mentioned. Read and understand it yourself and give counsel the benefit of your views.

RULE 11. Remember that when a contract is ready for execution it is intended as a record of the meeting of minds, that it is important that the minds of all parties should actually meet and that all should have the same understanding of the terms of the instrument. To this end every precaution should be taken, otherwise the germs of a dispute exist from the signing of the contract.

RULE 12. Remember that contracts entered into by carelessly spoken words or loosely written letters are as dangerous as other ambiguous contracts.

RULE 13. Make careful investigation of the parties with whom you are about to contract before entering into business relations with them.

RULE 14. Make no contract that is not beneficial to both parties. If an ambitious and incompetent person is anxious to make a contract that you know he cannot profitably perform, do not take advantage of his ignorance. He probably will not do his part and litigation will follow.

RULE 15. If possible avoid dealing with a person of doubtful character or one in whose good faith you lack confidence. If you must deal with such a person take unusual care that the terms of the contract are clearly stated and understood by all parties.

RULE 16. Carry out all contracts faithfully, accurately and completely.

RULE 17. Keep complete records of all transactions for a reasonable time after they are closed lest some question should arise in relation thereto.

Wills.

"The will" says the late SIR HENRY MAINE in his work on Ancient Law, is the instrument "which next to the contract has exercised the greatest influence in transforming human society." It is the instrument by which its maker is permitted to prescribe the succession to his property after death. In effect, the instrument becomes a private law for that purpose.

A will differs sharply from a contract since, in its making, no agreement between living persons is required. No person other than the maker has a right to know its contents or to suggest an amendment unless invited to do so. If the will proves to be safe and sound there will be little room for dispute. If not, every defect and uncertainty of meaning will be brought to light after death and will invite family disputes and litigation.

A safe and sound will has two indispensable elements both of which are within the power of the maker. The first, is a wise plan conceived on fair lines and equitable principles and so perfected as to meet the unknown contingencies of the future in family and estate. The second is a set of words that shall so reflect that plan that no uncertainty of meaning can arise under any possible contingencies of the future. In the absence of either of these elements, a will may prove a disappointment to those whose interests it is designed to protect.

On the basis of space devoted to each subject in a standard digest of all reported cases in the State of New York, the volume of litigation concerning wills seems to exceed by far that on any other subject before the courts. It also appears that of this great volume of litigation eighty-two per cent. is of a preventable nature, while seventy per cent. concerns the meaning of the instrument and less than eight per cent. concerns mental capacity, fraud and undue influence.

As in the case of contracts, these figures are taken only as approximate; but their comparison with figures relating to non-standardized contracts reveals a remarkable fact. They show that the bulk of litigation concerning wills turns on the meaning of the instrument. They also show that the percentage of preventable litigation concerning wills is about three times as great as the percentage of preventable litigation concerning non-standardized contracts, and from ten to twenty-three times as great as the percentage of preventable litigation concerning standardized contracts.

This disparity of percentages is easily explained. In the case of contracts the words used are employed only after they are carefully discussed and approved by parties having adverse interests and usually by their counsel as well. A will, however, is generally made in secret, without outside criticism. The words used are not subjected to the scrutiny of adverse interests until death has made change impossible. Then the only possible remedy is an agreement between the parties in interest, arbitration or legal proceedings.

The reasons for such an extraordinary amount of unnecessary litigation concerning wills are plain. The first is that many persons cling to the absurd idea that the writing of any will does not call for legal talent specially qualified for the work. The second reason lies in the fact that most wills are not tested before death, as is the practice in England. The idea behind such a test is for the maker of a will to assume that he is dead and to discover, by an independent expert examination during his life, what is likely to happen to his will after his death. There is no other possible method of testing a will before death. A judicial test before death is impossible. Even a law for the probate of a will before the death of the maker has been held unconstitutional.

RULE 1. Remember that in the preparation of no legal document is the inaccurate use or location of a word or phrase more serious than in a will.

RULE 2. Remember that the best time to prevent disputes and litigation concerning a will, is when the will is made. If, however, a will has been made, remember that it may still be tested before death and its defects and ambiguities discovered and corrected.

RULE 3. Remember that the more entangled one's estate the greater is the necessity for a proper will.

RULE 4. Remember that no layman should attempt to draw a will.

RULE 5. Do not hesitate to give your legal adviser all the facts and state your wishes fully. Without such data he cannot intelligently draw a will to meet your requirements.

RULE 6. Remember that the proper writing of a simple will calls for nothing less than ordinary professional skill and for much more care than an ordinary contract or other legal writing between living persons.

RULE 7. Remember that the writing of a complicated will or one intended to tie up property by trusts or otherwise, calls for legal talent specially qualified for the work.

RULE 8. Remember that the maker of a will can, with reasonable certainty, forestall family discord and prevent wasteful litigation after his death, (1) by planning his will wisely with reference to his family and estate, (2) by having it skilfully prepared and (3) by submitting it to at least one specially qualified legal critic, other than the draftsman, for independent interpretation and constructive criticism. In this manner, a fresh mind specially equipped and working on scientific lines will usually so test a will before death as to discover latent germs of dispute in time for correction.

RULE 9. Remember that undue economy in the preparation of a will often defeats the purpose of its maker.

RULE 10. Remember that it is wise for the maker of a will to occasionally examine its contents, particularly if the will is stale or does not automatically adjust itself to changes in family or estate.

RULE 11. Remember that if the maker of a will changes his domicile from one state or country to another that change may make a will, otherwise valid, wholly or partly void unless it complies with the laws of the new domicile.

RULE 12. Do not hesitate to alter your will as often as changed conditions demand, but do not attempt to do so without legal advice.

RULE 13. Remember that the expense of settling an estate is usually less under a will, if carefully drawn, than without it.

RULE 14. Do not delay in making or altering a will until you are ill or until you are about to take a journey and have little or no time to give to the proper planning and preparation of the instrument. Whatever the haste, be not in a hurry. Be deliberate but do not procrastinate.

Trusts.

Trusts are a legal device by which the legal title to property is vested in one person and the benefical interest in another. This device is used largely in wills and in certain forms of contract. The rules relating to the preparation of both instruments have already been stated and should be consulted by the reader.

The duties and the powers of the trustee are, of course, defined both by law and by the instrument creating the trust. The trustee assumes control of the property, subject to all the conditions and limitations of the trust, and he may not alter or dispense with any of them nor impose new ones. If he violates his instructions or exceeds his authority, he does so at his peril. (See rules relating to Executors, Administrators and Trustees, pp. 14–15.)

Executors, Administrators and Trustees.

In general the duties of executors and administrators are to bury the dead, prove the will, if any, or take out letters of administration, make an inventory, collect assets, pay debts and divide the remainder according to the will or the law of intestacy. If the will creates a trust, the trustee must keep the principal invested and collect and pay over the income. On the termination of the trust, he must pay over the principal as by the will directed. These fiduciary relations have always been fertile in unnecessary litigation.

In the transaction of such business it is manifestly unwise for a layman to act without legal advice. In performing the duties above mentioned certain rules of business should also be followed.

RULE 1. Keep strict accounts of all money received and paid out.

RULE 2. Do not mingle estate and private funds.

RULE 3. Deposit all estate funds in a special account in a legal depository.

RULE 4. Keep estate securities and property in a safe place and entirely separate from all other property.

RULE 5. Ascertain at once what securities are legal investments and what property should be sold.

RULE 6. Keep property insured and pay taxes.

RULE 7. Be diligent in watching the valuation of investments lest they deteriorate.

RULE 8. Keep posted on the requirements of the law and carefully perform the duties of the office.

RULE 9. If in doubt as to duties consult counsel.

Guardians.

A guardian is one who legally has the care and management of the person or property, or both, of a child during minority. His office is one of trust. It is his duty to collect all moneys due the infant and to obtain possession of all his property of every description and, from a business point of view, to manage the same much as a trustee under a will.

For rules see Executors, Administrators and Trustees, p. 14.

Corporations.

Corporations are artificial persons created by law for the transaction of business. Therefore, they necessarily act under laws designed to give their officers and directors power and to protect them, their stockholders and the public, in their respective rights. Large corporations habitually employ counsel in all matters requiring legal advice, but small corporations frequently fail to do so. A large part of the preventable litigation concerning corporations is directly traceable to this fact.

RULE 1. No layman should attempt to act as counsel for a corporation.

RULE 2. Corporate procedure requires competent legal oversight or periodic legal advice.

Real Estate.

The law of real estate may be said to be the backbone of American law. The estates and interests in real property, both present and

future, present the most intricate of all questions known to the courts. Modern statutes and the standardization of deeds and other instruments relating to real estate have, however, greatly reduced the number of such questions; but occasionally they arise when least expected and require careful treatment.

RULE 1. Every transaction in real estate should be under the supervision of a legal adviser.

RULE 2. To safeguard the interests of the parties, the preparation of a contract for the sale of real estate often requires more care than the preparation of a deed.

RULE 3. The owner of real estate should not sign a contract of sale until he can have the assurance of counsel that he has the required title to be delivered under the contract.

RULE 4. No title can be safely accepted without a proper examination.

RULE 5. It is always desirable to have a lease drawn or approved by counsel before signing.

PART II.

PREVENTION OF LITIGATION AFTER THE FACTS BECOME FIXED AND BEFORE SUIT.

After the facts upon which a dispute can be based have become fixed, either before or after a dispute has arisen, it is possible to do much to prevent litigation. What can best be done in each case and whether with or without legal advice, necessarily depends upon the facts and the parties to the prospective controversy. Differences may be minimized, adjusted or arbitrated. If not so disposed of, litigation will usually ensue.

RULE 1. In the matter of good faith give your adversary the benefit of the doubt.

RULE 2. Remember that pugnacity, vindictiveness, ill temper, impatience, carelessness, short-sightedness, arrogance, eagerness to take

undue advantage and absence of ethical principles are all provocative of litigation. Even if these instincts are inherent in human nature they may be controlled by an impartial consideration of the facts and a proper exercise of the reasoning powers. Before rushing into litigation wise legal advice of the right sort is all important.

RULE 3. Endeavor to look at both sides of a situation in a calm and impartial manner. Eliminate all personal animosity.

RULE 4. Discuss your differences fairly, frankly, patiently, without prejudice and with due regard to the sensibilities of the other parties in interest, or employ a lawyer that will do so.

RULE 5. In such discussions with adverse parties avoid making positive assertions, even if true, that may be offensive, but rather state the same facts in a diplomatic manner not calculated unnecessarily to arouse antagonism.

RULE 6. Throw all light possible upon the questions involved in the controversy in order that nothing shall be concealed which, if known, might harmonize divergent views.

RULE 7. Display a spirit of conciliation and be prepared to make some concessions, if necessary, to avoid a breach.

RULE 8. Remember that "a lean settlement is better than a fat law suit."

RULE 9. When negotiations fail to settle a dispute submit the questions to arbitration and abide by the decision of the arbitrators.

Minimizing Differences.

It sometimes happens that, notwithstanding the die is cast that foreshadows a dispute, it is possible to pursue some course of action which will have the effect of reducing differences or damages to a minimum. Such a course must generally be promptly undertaken and may or may not require legal advice, depending upon the parties and the questions involved.

Adjustment of Differences.

Differences may be adjusted by the parties themselves or with the aid of a mutual friend or their legal advisers. Which method is

better depends upon the parties and the questions concerned. When questions of law are involved, the legal opinion of a lawyer acceptable to both parties is often sufficient.

Submission of Controversy upon Agreed Statement of Facts.

Persons of full age may submit to the court upon an agreed statement of facts any question of difference which might be the subject of an action.

The usual difficulty with this procedure is that the parties will not agree upon the facts thus rendering a legal or equitable action necessary.

Where the parties are able to agree, however, this method of procedure is speedy, amicable and effective, resulting in a formal judgment of the court.

Arbitration.

Where differences cannot be adjusted between the parties or their attorneys and the intervention of a third party becomes necessary, there are several forms which arbitration may take. The arbitration may be (1) informal, (2) under the Code, (3) under the auspices of a commercial body, or (4) under the auspices of a bar association.

The experience of many business men and lawyers testifies to the advantage of these methods of adjusting differences wherever possible. They are inexpensive, speedy and peaceful.

Parties who may arbitrate.

Under the law of this state a corporation or any person of full age and sound mind may enter into arbitration.

Disputes that may be arbitrated.

Under the law of this state any existing controversy may be submitted to arbitration except a claim to an estate in real property in fee or for life.

Where the sole arbitrator is a lawyer, or where the submission provides that a lawyer on the board of arbitrators shall be sole judge of the law, there is no reason why substantially any question of law or fact involving property rights should not be arbitrated, provided the parties interested are of full age and sound mind. In arbitrations involving technical questions, whether in law or special lines of business, experience has shown the advantage of selecting as arbitrators persons in that particular line of business or otherwise familiar with the trade customs or technicalities involved.

The following are peculiarly appropppriate subjects for Arbitration: disputes concerning contracts, wills, mechanics' liens, insurance policies, sale and delivery of goods, partnerships, commissions, value of services, and particularly disputes arising out of business transactions in foreign countries, etc.

Informal Arbitration.

Informal arbitration is simply the submission of a controversy to a third party without formality with an understanding to abide by the decision. Such third party may be a business man or a lawyer whose legal opinion is acceptable to both. This method is often very effective when the controversy is one that can be settled out of court.

Arbitration under the Code.

The Code provides a complete system for the arbitration of differences before one or more arbitrators to be selected by the parties. A written submission to arbitration is required and, at the option of the parties, it may provide for a judgment of the court to be entered on the award.

Arbitration under the Auspices of Commercial Bodies.

The New York Chamber of Commerce and many other commercial bodies have provided systems of arbitration not only for the use of their own members but also for non-members whether citizens of this or any foreign country. They maintain committees of arbitration to supervise such matters.

Arbitration under the Auspices of the New York State Bar Association.

Following the example of commercial bodies, the New York State Bar Association has established under its auspices a system of arbitration which it deems practicable for lawyers to recommend to clients wishing to settle their disputes by arbitration. With one or more lawyers sitting in each case, arbitrators are enabled to pass upon questions of law as well as questions of fact.

PART III.

PREVENTION OF LITIGATION AFTER SUIT.

After a suit has been commenced, the parties should leave its management and all negotiations relating to the conduct or settlement thereof in the hands of their respective counsel.

The Chamber of Commerce of the State of New York and the New York State Bar Association, with a view to the prevention of unnecessary litigation after suit, urge upon members of the Bar that they make effort, even after litigation has begun, to bring about an amicable adjustment of differences; or, where this is impossible, to reduce disputed facts and disputed questions of law to a minimum. The Chamber and the Bar Association recommend that, in arranging for conferences, members of the Bar call attention to this recommendation as the opinion of public bodies submitted for the guidance of parties involved in litigation.

It would seem to be within the power of counsel in most cases to bring the parties together, if not upon terms of settlement, at least upon facts which should not unnecessarily occupy the time of the Court. To that end parties and counsel are urged to encourage agreements and stipulations concerning the facts wherever possible.

In this connection a perusal of the rules under Part II (p. 16, above) is commended to all parties in interest.

MSH 21166

END OF
TITLE